



Billing Code 3720-58

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

Policy and Procedural Guidance for Processing Requests to Alter U.S. Army Corps of Engineers Civil Works Projects Pursuant to Section 408

**AGENCY:** U.S. Army Corps of Engineers, DoD.

**ACTION:** Notice.

**SUMMARY:** The U.S. Army Corps of Engineers (USACE) is proposing to issue an Engineer Circular (EC), which is an agency policy document that will provide the policies and procedures related to how USACE will process certain requests by others to alter a USACE civil works project pursuant to Section 14 of the Rivers and Harbors Act of 1899, as amended (more commonly referred to as Section 408). This notice announces the availability of the draft EC for comment. The comment period on the draft document starts with the publication of this notice in the Federal Register and will last for 30 days. The draft EC is available for review on the USACE Section 408 website (<http://www.usace.army.mil/Missions/Civil-Works/Section408/>) and at <http://www.regulations.gov> reference docket number COE-2018-0003.

**DATES:** Comments must be submitted on or before [INSERT DATE 30 DAYS FROM DATE OF PUBLICATION IN FEDERAL REGISTER].

**ADDRESSES:** You may submit comments identified by docket number COE-2018-0003 by any of the following methods:

Federal eRulemaking Portal: *<http://www.regulations.gov>*. Follow the instructions for submitting comments.

*Email:* *HQ-Section408@usace.army.mil* and include the docket number COE-2018-0003 or “EC 1165-2-220 Comments” in the subject line of the message.

*Mail:* Headquarters, U.S. Army Corps of Engineers, ATTN: CECW-CE/3E62, 441 G Street NW., Washington, DC 20314-1000.

*Hand Delivery/Courier:* Due to security requirements, we cannot receive comments by hand delivery or courier.

*Instructions:* If submitting comments through the Federal eRulemaking Portal, direct your comments to docket number COE-2018-0003. All comments received will be included in the public docket without change and may be made available on-line at *<http://www.regulations.gov>*, including any personal information provided, unless the commenter indicates that the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI, or otherwise protected, through *regulations.gov* or e-mail. The *regulations.gov* web site is an anonymous access system, which means we will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail directly to USACE without going through *regulations.gov*, your e-mail address will be automatically captured and included as part of the

comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, we recommend that you include your name and other contact information in the body of your comment. If we cannot read your comment because of technical difficulties and cannot contact you for clarification, we may not be able to consider your comment. Electronic comments should avoid the use of any special characters, any form of encryption, and be free of any defects or viruses.

*Docket:* For access to the docket to read background documents or comments received, go to [www.regulations.gov](http://www.regulations.gov). All documents in the docket are listed. Although listed in the index, some information is not publicly available, such as CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form.

**FOR FURTHER INFORMATION CONTACT:** Ms. Tammy Conforti at 202-761-4649, email [HQ-Section408@usace.army.mil](mailto:HQ-Section408@usace.army.mil), or visit <http://www.usace.army.mil/Missions/Civil-Works/Section408/>.

**SUPPLEMENTARY INFORMATION:** Section 14 of the Rivers and Harbors Act of 1899, as amended, and codified in 33 USC 408 (Section 408) provides that the Secretary of the Army may, upon the recommendation of the Chief of Engineers, grant permission to other entities for the permanent or temporary alteration or use of any USACE Civil Works project. This requires a determination by the Secretary that the requested alteration will not be injurious to the public interest and will not impair the usefulness of the USACE project.

USACE is proposing to issue Engineer Circular (EC) 1165-2-220, Policy and Procedural Guidance for Processing Requests to Alter U.S. Army Corps of Engineers Civil Works Projects Pursuant to 33 U.S.C. 408, to update processes related to how USACE will review certain requests by others to alter a USACE civil works project. For example, other entities may want to alter a Civil Works project to increase recreational opportunities; improve flood risk management; or construct a road, transmission line, or pipeline across a Civil Works project. The purpose of the Section 408 review is to ensure that the Congressionally-authorized purpose and benefits of a Civil Works project are protected and maintained (e.g., flood risk management, navigation, coastal storm damage reduction) and to ensure what is being proposed is not injurious to the public interest. An effective and efficient review of proposed alterations to Civil Works projects protects tax payer investments in water resources infrastructure, while ensuring compatibility with new infrastructure, improvements, and other public or private interests.

The first comprehensive policy and procedures for evaluation of alterations under Section 408 was issued as EC 1165-2-216 on July 31, 2014. Based on lessons learned from implementing EC 1165-2-216, USACE began the process to revise and update its Section 408 process to clarify applicability, roles and responsibilities, and the basic requirements. From November 2016 through January 2018, USACE issued multiple interim guidance to improve the efficiency and effectiveness of the Section 408 review process while continuing to work on a full policy revision.

USACE has now completed a draft of a new policy document (EC 1165-2-220) to replace EC 1165-2-216. EC 1165-2-220 would expire two years from issuance, which will provide USACE time to consider implementation experience to identify any necessary clarifications or changes. After two years, EC 1165-2-220 will either be revised, rescinded, or converted to an Engineer Regulation, which does not expire.

EC 1165-2-220 is intended to consolidate the interim guidance issued since 2016 and update procedures to facilitate a scalable approach to reviewing Section 408 requests in a timely manner while maintaining a national consistent approach to decision-making. EC 1165-2-220 includes proposed revisions that clarify the geographical limits for when the procedures set forth in the EC for processing a Section 408 permission apply; eliminates duplication of effort when the intent of Section 408 can be satisfied by another existing USACE review process; addresses emergency alterations; and, provides additional detail on categorical permissions and an option for conducting a multi-phased review. The EC also provides greater clarity on requirements for environmental compliance; implements timelines for USACE reviews and notifications; and, provides additional delegation of decision-making authority.

EC 1165-2-220 has also been developed in accordance with requirements in Section 1007 of the Water Resources Reform and Development Act (WRRDA) of 2014 (Public Law 113-121) and Section 1156 of the Water Resources Development Act (WRDA) of 2016 (Title I of Public Law 114-322). USACE now invites all interested parties to review and provide comment on the draft of EC 1165-2-220 prior to final publication.

Following the comment period, USACE will consider all comments received, make revisions as needed, and publish the final EC 1165-2-220 as soon as possible. When the final EC is published, a notice will be placed in the Federal Register. The final EC will be available on USACE publications website (<http://www.publications.usace.army.mil/> ).

DATED: 31 January 2018    APPROVED:\_\_\_\_\_

James C. Dalton

Director of Civil Works

[FR Doc. 2018-02207 Filed: 2/2/2018 8:45 am; Publication Date: 2/5/2018]